Supreme Court, U. S.
FILED
DEC 23 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1975

No. 75-5387

RODOLFO SIFUENTES,
Petitioner

—*v.*—

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 4, 1975
CERTIORARI GRANTED NOVEMBER 11, 1975

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-5387

RODOLFO SIFUENTES,

Petitioner

—*v.*—

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX

	Page
Docket Entries	1
Indictment	4
Petitioner's Motion to Suppress	6
Excerpts from Trial Transcript	9
Memorandum Order of District Court	31
Judgment and Commitment	54
Notice of Appeal	56
Fifth Circuit's Rule 18 Notice	57
Judgment of the Court of Appeals	58
Order Granting Certiorari	59

DOCKET ENTRIES

DATE	PROCEEDINGS
4/29/74	Complaint filed; Defendant informed of Complaint, right to counsel and all rights under Rule 5, U.S. Magistrate's Rules. Defendant waived counsel and preliminary hearing. Bond set at $5,000. Defendant committed to custody of U.S. Marshal.
5/1/74	10% deposit authorized by Judge Mallet.
5/1/74	Defendant released on a $500 deposit on his $5,000 bond. His address: 107 S. Liberty Ave., Weslaco, Texas 78596, Tel. No. 968-8430.
5/2/74	Deposit transmitted to Clerk in Houston, Texas.
5/6/74	Certificate of Grand Jury filed.
5/6/74	INDICTMENT FILED.
5/22/74	ORDER: appointing counsel Ballard Bennett, Signed WMM and filed.
5/24/74	Deft. appears W/mag. appt'd counsel, Ballard Bennett for ARR: caut. Waive formal arr: enter P/NG. set for trial: 6/3/74 at 9:30 A.M.
5/31/74	Defendant's Motion to Suppress Evidence, filed.
5/31/74	Defendant's Motion in Limine, filed.
5/31/74	Attorney Bennett appears deft. fails to appear for final pre-trial. Counsel apologizes to the Court. Counsel for deft. and govt. announce Ready for trial. Jury to be selected on June 3, 1974. Motion in Limine is overruled. Motion to suppress evidence will be carried along with the case.
6/3/74	Deft. appears for jury selection. Jury selected and instructed to return on June 10, 1974 @ 9:30 A.M. for trial of this case. Jury will be sworn on 6-10-74.

DATE	PROCEEDINGS

6/10/74 Deft. appears w/Glen A. Barnard for trial—jury heretofore selected on 6-3-74 is present. Jury is sworn—Deft. arr: P/NG to all counts Rule invoked by deft. Seven (7) witnesses sworn. Border Patrol Agent Colvin Moore is excused from the rule. Opening statement by the government @ 11:17 A.M. Opening statement by the defendant @ 11:17 A.M. Evidence begun @ 11:20 A.M. Govt's witnesses heard. Government rests—Deft. moves for instructed Verdict of Acquittal—overruled. Motion to Suppress is overruled. Trial not concluded Postponed till Tuesday June 11, 1974 @ 9:00 A.M.

6/11/74 Deft. appears w/counsel—Jury present—Trial resumed @ 9:00 A.M. Deft. witnesses heard. Cross examination @ 11:05 Deft. rests @ 11:35—Both sides close.

6/11/74 Deft. asks the Court to reconsider this Motion To Suppress the evidence overruled. Deft. moves for an instructed verdict of Acquittal—Overruled. Deft's requested charge filed. Government objects to Charge #5. Court to give general instructions on credibility of witness, Arguments of Counsel—Sandoval 1:45 P.M. Bennett 1:55 P.M. Sandoval 2:26 P.M. Charge of Court @ 2:35. Jury out @ 2:52—Verdict of Jury "Guilty" on Cts. 1, 2, 3, & 4. Deft. requests jury be polled Jury is polled and they all responded by saying "This is my Verdict" Verdict is received and ordered filed. P.S.I. ordered —To be sentenced on July 12, 1974 @ 9:30 A.M. Deft. continued on same bond.

7/12/74 Deft. appears W/appt'd counsel for sentencing on Cts. 1, 2, 3, and 4. Ct. 1; 2 yrs. impr. 6 mos to serve. Ct. 2: 2 yrs. impr. 6 mos to serve. Sentence to run concurrent—Total 6 mos. to serve. Ct. 3: 2 yrs. impr. Ct. 4: 2 yrs. impr. E.S.S. 3 yrs. Prob. W/super. cond. deft. submit to treatment on his drinking problems concurrent but consecutive to

DATE	PROCEEDINGS

sentence in Cts. 1 and 2 Deft. continued on original bond pending appeal.

7/13/74 Judgment and commitment, filed.

7/16/74 Deft's Notice of Appeal, filed.

8/2/74 Reporter's Transcript of Proceedings, filed.

8/2/74 Memorandum, Filed. Signed RGG and filed.

8/5/74 Mailed file to the U.S. Court of Appeal in N.O.

08/27/75 Judgment of Conviction appealed from is affirmed. From the 5th. Circuit Court of Appeal. Received original file.

09/08/75 ORDER: that appellant's application for bail pending the filing and disposition of a petition for writ of certiorari in the United States Supreme Court is Denied from the 5th. Circuit Court of Appeal, filed.

09/15/75 Record on appeal returned to Court of Appeals for certification to Supreme Court.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Cr. No. 74-B-102

[Filed May 6, 1974]

UNITED STATES OF AMERICA

vs.

RODOLFO SIFUENTES

INDICTMENT

THE GRAND JURY CHARGES:

COUNT 1

That on or about April 28, 1974, within the Brownsville Division of the Southern District of Texas, and within the jurisdiction of this Court, RODOLFO SIFUENTES, knowing that a certain alien named Rito Alvarez-Flores was then and there in the United States in violation of law and having reasonable grounds to believe that said alien's entry into the United States occurred less than three years prior to the aforesaid date, did transport and move said alien by means of a motor vehicle from near Progreso, Texas, to near Sarita, Texas, in violation of Section 1324(a)(2), Title 8, United States Code.

COUNT 2

That on or about April 28, 1974, within the Brownsville Division of the Southern District of Texas, and within the jurisdiction of this Court, RODOLFO SIFUENTES, knowing that a certain alien named Abel Barboza-Estrada was then and there in the United States in violation of law and having reasonable grounds to believe that said alien's entry into the United States occurred less than three years prior to the aforesaid

date, did transport and move said alien by means of a motor vehicle from near Progreso, Texas, to near Sarita, Texas, in violation of Section 1324(a)(2), Title 8, United States Code.

COUNT 3

That on or about April 28, 1974, within the Brownsville Division of the Southern District of Texas, and within the jurisdiction of this Court, RODOLFO SIFUENTES, knowing that a certain alien named Guadalupe Lerma-Avila was then and there in the United States in violation of law and having reasonable grounds to believe that said alien's entry into the United States occurred less than three years prior to the aforesaid date, did transport and move said alien by means of a motor vehicle from near Progreso, Texas, to near Sarita, Texas, in violation of Section 1324(a)(2), Title 8, United States Code.

COUNT 4

That on or about April 28, 1974, within the Brownsville Division of the Southern District of Texas, and within the jurisdiction of this Court, RODOLFO SIFUENTES, knowing that a certain alien named Armado Rojero-Ortiz was then and there in the United States in violation of law and having reasonable grounds to believe that said alien's entry into the United States occurred less than three years prior to the aforesaid date, did transport and move said alien by means of a motor vehicle from near Progreso, Texas, to near Sarita, Texas, in violation of Section 1324(a)(2), Title 8, United States Code.

A TRUE BILL:

/s/ [Illegible]
Foreman of the Grand Jury

ANTHONY J. P. FARRIS
UNITED STATES ATTORNEY

BY: /s/ Charles F. Sandoval
CHARLES F. SANDOVAL
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Criminal No. 74-B-102

UNITED STATES OF AMERICA

vs.

RODOLFO SIFUENTES

DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

To the Honorable Judge of said Court:

COMES NOW Rodolfo Sifuentes, the Defendant in the above entitled and numbered cause, and files this, Defendant's Motion to Suppress Evidence, and as grounds therefor respectfully shows the Court the following:

In the early hours of April 28, 1974, Defendant was driving his personal automobile from Weslaco, Texas, to Taft, Texas. He stopped near Raymondville, Texas, and was asked for a ride by four men who wanted to go in the direction of Corpus Christi, Texas, and who told Defendant their automobile had broken down. Defendant gave these four men a ride.

Defendant then proceeded north on U.S. Highway 77 until he was stopped at a Border Patrol checkpoint near the town of Sarita, Texas, which Border Patrol checkpoint was approximately 65 to 90 miles north of the Mexican border. All vehicles traveling north to the interior of Texas were being stopped at this checkpoint, and Defendant's automobile was stopped on a routine basis. Defendant was forced to stop at the checkpoint by a Border Patrol agent who then approached Defendant's automobile, looked in its window and observed Defendant and the four passengers therein. The Border Patrol agent questioned the Defendant and at least one of the passengers; whereupon he ordered the four passengers to get out of Defendant's car and took them a

short distance away where they were questioned at length. By this interrogation it was determined by the Border Patrol that these four passengers were apparently all aliens who were in the United States in violation of law.

Defendant says that this stopping of his automobile by the Border Patrol was an unlawful invasion of his right of privacy and the facts further constitute an unlawful search without warrant, probable cause or any other legal authority. In this regard Defendant would show that U.S. Highway 77, on which said Border Patrol checkpoint was situated, runs from the United States-Mexico border north to Kingsville, Victoria and beyond. There are a number of cities on Highway 77 between the Mexican border and the location of this checkpoint, including Raymondville, Harlingen, San Benito, and Brownsville, as well as several smaller communities. Also between the checkpoint and the border there are at least two entire counties—Willacy County and Cameron County.

Defendant says that on the aforesaid occasion all the evidence that he was transporting as passengers in his automobile four illegal aliens, Rito Alvarez-Flores, Abel Barboza-Estrada, Guadalupe Lerma-Avila and Armando Rojero-Ortiz, was obtained by the Border Patrol and government in violation of the laws and Constitution of the United States, and in particular the Fourth Amendment of the United States Constitution.

Wherefore, Defendant prays and moves the Court to suppress all of the evidence obtained by the government at the time of or as a result of stopping Defendant's automobile, including all testimony of each of the four said passengers in Defendant's automobile and of the Border Patrol agents working at said checkpoint, and any other evidence obtained as a direct or indirect result of stopping Defendant's automobile, and that the government, in prosecuting its case against Defendant herein, be prohibited and barred from calling as witnesses all and any of the said four passengers in Defendant's automobile and also the said Border Patrol agents working at the checkpoint, and from using or offering therein

any other such testimony or evidence obtained directly or indirectly by stopping Defendant's automobile at said checkpoint.

Respectfully submitted,

/s/ Ballard Bennett
BALLARD BENNETT
Court-Appointed Attorney for
Defendant, Rodolfo Sifuentes

[EXCERPTS FROM TRIAL TRANSCRIPT]

[2] PROCEEDINGS OF MAY 31, 1974

10:30 A.M.

THE COURT: Where is Rodolfo Sifuentes?

MR. BENNETT: Your Honor, I didn't realize that he had to be here this morning.

THE COURT: Yes, I wanted every defendant here.

MR. BENNETT: I asked you—

THE COURT: If there was any change in the plea, I want to know about it.

MR. BENNETT: Well, there is not, Your Honor.

THE COURT: Did you file a motion?

MR. BENNETT: Yes sir, I have. You remember I talked to you, we had a motion to suppress and you said you would carry it along, and I have filed it and I have a little order on the end of it that says that it will be heard at the time of trial if satisfactory with the Court, and I also have a short motion in Limine, Your Honor. I don't know whether—

THE COURT: Let's hear it now, let's hear it now.

MR. BENNETT: All right, sir. It is simply my defendant intends to take the stand and testify in this case, and it is simply to instruct the attorney for the United States prior to asking him about any previous [3] conviction to check with the Court outside the hearing of the jury.

THE COURT: What has he been convicted of?

MR. BENNETT: As I understand it, Your Honor, 10 years ago he was convicted in this Court, he pled guilty to and was convicted of soliciting and transporting aliens, in 1964, and he also has a DWI first, as I understand it.

THE COURT: That DWI first wouldn't be.

MR. BENNETT: Doesn't have moral turpitude, Your Honor.

THE COURT: But if a man has previously been convicted, although the general rule is that a conviction more than five years old or seven years old in this Federal Court might be too remote, but if it is a con-

viction directly bearing on the crime that he is being accused of, see, it can be used, and your motion as far as that conviction is concerned, your motion is overruled.

MR. BENNETT: All right, sir.

THE COURT: Yes, all right.

MR. BENNETT: I have an order that the Court can sign.

THE COURT: I don't have to sign any orders. Everything is of record here.

MR. BENNETT: All right.

[4] THE COURT: And the Clerk makes a notation on the docket.

Your motion in Limine as far as the conviction for transporting or soliciting aliens in the past is overruled.

MR. BENNETT: All right, sir.

THE COURT: Yes.

MR. BENNETT: Am I to understand then that the Court agrees that I can file this motion to suppress?

THE COURT: Oh, yes, and I am going to carry it along. I understand you are making it on the same grounds as Almeida-Sanchez.

MR. BENNETT: Yes sir.

THE COURT: Well, you may be right. The Ninth Circuit apparently went hog wild and said all checkpoints—can't stop them at checkpoints any more. I'm not agreeing with them and I think the Supreme Court is going to decide the issue finally, but I am telling you right now that if you are basing your motion to suppress on Almeida-Sanchez it will be promptly overruled by this Court until the Supreme Court tells me otherwise, see.

MR. BENNETT: I understand that, Your Honor, but I still feel like I have got to make it.

THE COURT: I know you have to make it. I [5] know you have to make it.

• • • •

[14] GUSTAVO DE LEON, called as a witness by the Government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SANDOVAL:

Q State your name, please.
A Gustavo De Leon.
Q What is your occupation, sir?
A I am a Border Patrol Agent.
Q How long have you been with the Border Patrol?
A Two years.

MR. BENNETT: Your Honor, may I remind the Court the defendant has a motion to suppress evidence.

THE COURT: Yes. Same ruling.

MR. BENNETT: And we would object to this man's testimony on the basis that it is results of a checkpoint and stopping and search which we say is illegal.

THE COURT: Your motion has been overruled, counsel.

MR. BENNETT: I understood the Court was carrying it along.

THE COURT: Yes, I am carrying it along with [15] the case but you don't have to object to everything.

MR. BENNETT: Well, fine, Your Honor. I just want to be sure that I don't waive anything for the defendant.

THE COURT: Yes, you are not waiving anything, counsel.

MR. BENNETT: It is my understanding then that I do not have to object any more to these questions?

THE COURT: No, you don't have to object any more to the testimony.

MR. BENNETT: Thank you, sir.

Q Mr. De Leon, I forgot how long you said you were with the Border Patrol.
A Two years.
Q Two years. Were you on duty on April 28th, 1974?
A Yes sir.
Q And what were your duties on that day?

A I was performing traffic control checkpoint duties for the Kingsville station at the checkpoint near Sarita.

Q Now, what highway is that on?

A U.S. 77.

Q And could you estimate how far it is from Brownsville?

[16] A It's approximately 90 miles.

Q About 90 miles north of Brownsville?

A Yes.

Q On Highway 77?

A On Highway 77.

Q Now, what do you do when you are working the checkpoint for the Border Patrol?

A We try to apprehend illegal aliens that are working their way into the interior of the United States, and apprehend smugglers that help them try to get to the interior of Mexico.

Q And how do you go about this by working the checkpoint?

A We stop every car that comes to the checkpoint unless we are satisfied that they are local people. We just, with a casual slowdown, we let them go on through after we have seen who is in the vehicles.

Q Now, is this Border Patrol checkpoint always operated?

A Yes sir, 24 hours a day unless due to manpower or weather would be the only time we are not set up.

Q And you have a sign or anything like that there to tell them to slow down?

A Yes sir. We have permanent state sign half a mile from the checkpoint south, warns people to slow [17] down. Approximately 260 yards from the checkpoint we have "stop ahead" sign. Then right at the checkpoint we have a "stop" sign, "U.S. officers."

Q Now, on this date, April 28, 1974, were your duties just routine on that date?

A Yes sir.

Q What time did you go on duty?

A I went on duty at 12:00 midnight.

Q And could you tell the court and the ladies and gentlemen of the jury what took place in the early morning hours?

A Okay. At about 3:00 A.M. we had this vehicle come around the corner which was approaching the first "slow down" sign at a pretty high rate of speed, and then slowed down until he came to the stop at the checkpoint. I was on the point at that time, and I approached the car and I could only see one person which was the driver.

I approached the car, and he hollered something like, "Hi, Champion."

And I said, "I'm not Champion," and said, "Immigration Inspection," and said, "are you a U.S. citizen?"

And he stated, "yes, I am, I'm from Weslaco."

About that time I saw a person laying in the front seat, and three more laying in the backseat pretending [18] to be asleep. I proceeded to try and wake the person in the front seat, and I could see one in the backseat was opening one eye and trying to keep the other one closed.

So I said, "okay, wake up, where are you all from?"

And, well, they said Mexico. So I took the aliens out of the car and told the driver to pull this vehicle to the secondary lane.

About that time the partners came out and took the aliens inside the van.

Q Now, who was driving the car?

A A person by the name of Rodolfo Sifuentes.

Q Do you see him here in the courtroom today?

A Yes sir.

Q Would you point him out, please.

A He is the gentleman in the brown suit.

MR. SANDOVAL: Please let the record reflect that this defendant or this—

THE COURT: Both of them have brown suits. Front one or back one?

A The one in the back with the wine tie.

THE COURT: All right.

MR. SANDOVAL: Please let the record reflect that this witness has identified the defendant.

MR. BENNETT: Not the ugly one.

[19] Q Now, you said that you established that these people were from Mexico. Did you ask them if they had papers?

A I asked them for their citizenship, and they said they were from Mexico.

Q Did you discover whether they had papers?

MR. BENNETT: Your Honor, I believe this is hearsay to this defendant.

THE COURT: Overruled.

You asked them that in front of this defendant?

A Yes sir.

THE COURT: Overruled.

Q My question, sir, is did you—

THE COURT: Determine that they didn't have any papers?

A Yes sir, I determined there was no papers, they didn't have no papers. They stated they were just citizens of Mexico. They didn't produce anything.

Q After this took place, did you read the defendant and these aliens their constitutional rights?

A Okay, we took the aliens inside the van and I walked to Sifuentes' car and my partner, one of my partners, walked there, too, and he was the one that read the rights to Mr. Sifuentes in my presence.

Q What is your partner's name?

[20] A Edward Jerusa.

THE COURT: Is he here with you today?

A Yes sir.

THE COURT: Mr. Jerusa?

A Yes sir.

THE COURT: Mr. Jerusa is out there. He was here, Counsel. You didn't put him under the rule.

MR. SANDOVAL: No, Your Honor, I don't plan to introduce any statements.

THE COURT: Don't intend to call him?

MR. SANDOVAL: Yes.

THE COURT: Make sure he observes the rule in case you call him later on.

MR. SANDOVAL: Yes, Your Honor, I will.

I will pass the witness.

—0—

CROSS EXAMINATION

BY MR. BENNETT:

Q Mr. De Leon, I believe you said this was a permanent border checkpoint, is that correct?

A Yes.

Q And it is operated 24 hours a day, weather permitting?

A Yes sir.

Q And, of course, the obvious reason for not [21] operating it on bad weather is if you stop the car on the highway there the visibility being bad you are liable to have very serious accident, is that it?

A Yes sir, to protect the public.

Q Would you say that this checkpoint was approximately 65 to 90 miles from the United States-Mexican Border?

A 90 miles, yes sir.

Q As the crow flies or the bird?

A No sir, air miles is approximately 86, I believe.

THE COURT: From Brownsville?

A From the border.

THE COURT: At the nearest point?

A Yes, from the—

THE COURT: I have figures, you know, that I have been supplied, and the Rio Grande, you know, curves up there. Unless you know—do you know exactly how many miles there are from the border to the checkpoint?

A No sir, exactly, no sir. I'm just estimating about 90 miles.

THE COURT: But that is from Brownsville you said?

A Yes sir.

THE COURT: Well, there is lots of border further [22] away from us that is closer to that spot?

A Right.

THE COURT: As I understand it, McAllen is closer to that checkpoint than Brownsville is.

A McAllen—

THE COURT: Edinburg, Weslaco?

A I guess Weslaco, Edinburg would be. I don't think —I'm not familiar with the valley area. I don't know how far.

THE COURT: Where are you from originally?

A Corpus.

THE COURT: Corpus Christi?

A Yes sir.

THE COURT: I think the map—if you are trying to make a point of where the checkpoint is from the border, the map will show. This court will take judicial notice—that is for the purpose of your motion?

MR. BENNETT: Yes sir. I have said it was 65 to 90 miles, and I think it is in that area.

THE COURT: Yes.

Q Would you agree it is between 65 to 90 miles to the nearest point on the border?

A Yes sir.

Q All right. Now, all vehicles traveling north [23] to the interior were being stopped at the time in question, is that right?

A Yes sir.

Q And that was just done on a routine basis? You want to look in each vehicle to see who is in there and what is happening, is that correct?

A Yes sir.

Q All right. You had, I believe you said, you had some lights flashing. How many sets of lights did you have at this checkpoint?

A Right at the checkpoint, okay, on the "stop ahead sign", which is approximately 260 yards from the checkpoint, it is a blinking light; amber blinking light. At the checkpoint we have a big red flashing "stop" light.

Q All right, sir. Does this "stop" light sit on the side of the road or in the road?

A It hooks onto the same "stop" sign that sits right in front of the van.

Q But that van is on the side so the light is over on the side of the road?

A Right.

Q Do you have anything in the middle of the road?

A Okay, in the middle of the road we have cones.

Q All right. And that is to keep the traffic that is going north over in the right lane and also to [24] keep the traffic coming south in the—

A Right, there is another sign north of us that says "no passing."

Q All right. And incidentally, you don't bother the traffic coming south routinely, do you?

A No sir.

Q You are just interested in the northbound traffic?

A Yes.

Q All right. Now, when you stopped this car that you have testified about, you could not see how many people were in it until you approached it, is that correct?

A Right.

Q There is some artifical lights there at this checkpoint, is it?

A Yes sir, in the back of the checkpoint we have two big lights.

Q And so when you walked up and looked into the car it was then that you could see these aliens?

A Yes sir.

Q And of course you testified you saw Mr. Sifuentes was driving?

A Yes sir.

Q And the initial questioning that you did, as I understand your testimony, you asked Mr. Sifuentes about [25] his citizenship and he responded in a satisfactory manner, and then while these four men were still in the car you questioned them about their citizenship?

A Yes.

Q Did you question just one first or did you ask the questions to them generally?

A I questioned the one in the front seat first and then my second question was to the three in the back.

Q And you did not receive a satisfactory response from any of these four, is that right?

A No sir.

Q So then you ordered them to get out of the car?

A Yes sir.

Q You took them a short distance away then and they underwent interrogation, is that correct?

A Yes—well, we put them inside the van which would be a short distance from the—

Q Did you take part in the interrogation?

A Part of it, yes sir.

Q And you had how many men working on this checkpoint or were working at the time?

A It is two officers assigned to the shift and then there was two more officers backing us up that were road officers.

[26] Q I see. Well, what do road officers do?

A They work the road south and north of us.

Q In other words, they are sort of mobile and they—

A Mobile observing traffic.

Q Yes, they are, I guess, to keep people from stopping down to the south and letting people out and walking around the checkpoint, is that correct?

A That, too; pickup hitchhikers.

Q All right. Now, you said that you learned that these aliens were illegal aliens. It was during this interrogation right after you stopped them at the checkpoint that you first learned of that, is that correct?

A Right away, yes sir.

Q You say this is on Highway 77 running north and south?

A North and south.

Q All right, sir. And that runs from the U.S.-Mexican border to Kingsville and Victoria and on beyond up into the interior of the state?

A Right, goes on.

Q All right. There are a number of cities on U.S. Highway 77 between the checkpoint and the Mexican border, including Raymondville, Harlingen, San Benito and Brownsville, is that correct?

[27] A Yes sir.

Q And these are fairly large, substantial cities, is that right?

A I believe so, yes sir.

Q And there are also several smaller communities in between like Lyford and so forth that is on U.S. Highway 77?

A Yes sir.

Q And in fact, Cameron and Willacy County is between the Mexican Border and this checkpoint? The entire counties lie between that?

A Yes sir.

Q Is there any substantial amount of traffic that flows north through this checkpoint on Highway 77?

A North, yes sir.

Q Yes sir. How was the traffic on the occasion in question? Was it fairly—

A It was medium.

Q What you usually would expect in the early morning hours on Sunday morning?

A Yes sir.

Q You said you worked an eight-hour shift?

A Eight-hour shift at the checkpoint, yes sir.

Q And I suppose whichever shift you are on depends on how much traffic?

[28] A Right.

Q The other two shifts, the one that would run from 8:00 to 4:00 and then from 4:00 to midnight are the ones where most of the traffic come through?

A Normally, yes sir.

Q And is Sunday a fairly heavy day usually for traffic?

A Pretty heavy, yes sir.

Q It is probably on just an ordinary week you would expect Sunday to be one of your heaviest days?

A Yes sir.

Q All right. It is a crime to cross the United States border illegally, is it not?

A Yes sir.

Q So what you found out from these gentlemen, if it were true, then that would make them criminals, is that right? These four aliens?

A Yes sir.

Q Did you charge them with illegal entry into the United States?

A Did we charge?

THE COURT: Were they charged with illegal entry?

A Yes sir.

Q And as far as you know that is still pending [29] against them?

A Yes sir.

THE COURT: Still pending or were they taken before the magistrate? Do you know? If you don't know something, don't be saying it. If you don't know, say, "I don't know."

A No, I don't know whether they were taken before the magistrate on that charge then.

THE COURT: Do you know if the charge is still pending?

A No sir, I don't know.

THE COURT: You don't know. Well, tell him you don't know.

The records of this court will show what happened to those people.

Q Did one of these four passengers have a letter or a piece of paper with an address on it from someone up in the United States?

A I don't remember.

Q Did you make a written statement concerning this incident?

A No sir, I didn't make the written statements. My partners did.

Q You didn't make it but your partners did? And it was concerning this incident that you were testifying [30] about, is that right?

A Yes sir.

Q Did you see the statement at the time it was made?

A Yes sir, I did.

Q And it was correct? The facts therein were correct as you knew them, is that right?

A Yes sir.

MR. BENNETT: Could I see the statement, Your Honor, at this time?

THE COURT: Yes. That is whose statement there?

MR. SANDOVAL: That is the statement of Edward Jerusa, Your Honor.

Your Honor, if I may clarify just for the Court, I'm sure that what he asked was A—was the ordinary form they make out. He did make a written memorandum.

I think he may have forgotten it, that you made a written memorandum.

THE WITNESS: Okay, that is a memorandum. I didn't take no statements. I made memorandum as to the facts to present to the chief. The facts as to whatever happened there that night, involved in this case.

THE COURT: You did write something?

A A memorandum, yes sir.

[31] THE COURT: When you say you hadn't made a statement you meant that you hadn't taken any statements from anybody?

A On statements under oath from the aliens, no sir, I didn't take one.

THE COURT: But did you make one, did you write something?

A I made a memorandum, yes sir.

THE COURT: That is what he is asking you for. Do you have that?

MR. BENNETT: He has given it to me.

MR. SANDOVAL: Your Honor, if I may—

THE COURT: Mark it Government Tender 1.

(Government's Tender Number 1 marked for identification.)

MR. SANDOVAL: Please let the record reflect that the Government is tendering to the defense what has been marked as Government's Tender Number 1, a one-page typed statement made by this witness.

Q. Did you say, sir, that one of these aliens did not have a letter or piece of paper on them?

A I said I don't remember.

MR. SANDOVAL: Your Honor, we are going to object to that. He said he didn't remember it.

Q Well, did you search the aliens?

[32] A Yes sir, we did.

Q What did they have on them?

A They just have their—I can't recall exactly what each one had. It was limited stuff. Few dollars or pesos and few other items. I can't recall exactly.

Q Did you make a list of what they had?

A No sir.

Q No list?
A No sir.
Q Well, it is fair to say then that they could have had a letter or an address?
A It could have, yes sir.
Q All right. Now, this permanent checkpoint that you were working at is the one near—the so-called Sarita checkpoint, it is on Highway 77 and this highway runs essentially at that area from Raymondville to Kingsville, is that right?
A Yes sir.
Q Now, the border patrol has another permanent checkpoint on U.S. Highway 281, does it not? Between Falfurrias and Edinburg somewhere?
A Yes sir.
Q And does it have a permanent checkpoint, one that operates 24 hours a day, on the highway to Hebronville going out of Edinburg and up through there?
[33] A They have another checkpoint around that area. I don't know whether it is called a permanent checkpoint or it is there 24 hours. I don't know, sir.
Q You just don't know what the operation is on that?
A I don't know, right.
Q All right, sir. Now, you said I believe that when you looked into the car these aliens were lying down, is that right?
A Yes sir.
Q How could that man on the front seat have been lying down?
A He was lying down with his head towards the driver.
Q Well, did he have his feet up on the seat?
A No sir, his feet were under the dashboard.
Q Where was his head?
A His head was right next to the driver.
Q What about the three in the back? How were they lying down?
A They were all scooted down in the seat as far as they could go.
Q They were still sitting in the seat, is that right?
A Well, if you call it sitting, I guess so.
[34] Q Well, when you say lying you mean they were in a sitting position, they simply had their heads back, is

that right, or were they on the floor or on the seat stretched out?
A Okay, the one behind the driver was scooted all the way down, kind of putting his head all the way down in the corner. The other one was almost behind him and all sliding all the way down with his feet on the floorboard but lying to one side. And the one on this side was kind of towards the—on my side—but scooted all the way down in the seat.
Q So I believe what you are telling me is that they all had their feet on the floor and their rear ends in the seat? Is that a fair statement?
A More or less, yes sir.
Q And their heads were lying in various positions up against the back, is that correct?
A Yes.
THE COURT: But trying to hide from the view of the window? Is that what you are trying to tell us?
A Yes sir, down from the window.
THE COURT: If you had been standing there and had recognized this man as being a citizen, had been there before, crossed many times, you could have not seen anybody else or could have waved him on?
[35] A I could have waved him on and I never would have known anybody else in the car.
THE COURT: Because you couldn't see it?
A Yes sir.
THE COURT: Unless you got right on it?
A Yes sir.
THE COURT: In other words, what you are telling is they were scooted down so they would be down below the window level of the car?
A Where they could be seen from the outside, yes.
THE COURT: Okay. And there is a Roberto Champion that works that checkpoint? There is a Roberto Champion that works that checkpoint?
A Yes sir.
THE COURT: He is a U.S. Border Patrolman?
A Right, yes sir.
Q Well, I must have misunderstood you then because I thought you said that man in the front seat was sitting

and had his head over on the seat by the driver—I mean on the back of the seat by the driver.

A Okay, the man in the front seat was—okay, from his waist down he was laying this way, down, and his feet were sideways but down on the floorboard.

Q Well, I thought you said his head was up leaning [36] against the back of the seat?

A Not on the man on the front seat, no sir.

Q Well, how was he again?

A Okay, the man in the front seat; here is the driver, here is the man, he was laying this way with his feet this way. In other words, he was laying—from the waist down he was all the way down on the seat. His face was right next to the driver and his feet were down on the floorboard sideways.

Q So his head then was on the seat that he was sitting on?

A Okay, his head would be on the seat, right.

Q And how close did you have to get to the automobile and all to see this?

A Right up to the door.

Q And you did go right up to the door?

A I did, yes sir.

THE COURT: And before you got to the door this man yelled out and said, "Hello, Champion"?

A Yes sir. When I started walking out of the van, he hollered at me, "Hello, Champion."

MR. BENNETT: Pass the witness, Your Honor.

THE COURT: You say this road makes a curve there. You said came around the corner. You mean came around the curve?

[37] A Or I meant a curve. Right before you get to the checkpoint you come over a hill and then—small hill—then you come around a curve where there is a park on the left-hand side.

Q And you all can see the headlights of a car approaching?

A Yes sir.

Q And you said he was coming at a pretty fast clip but he slowed down?

A He slowed down pretty fast. Like somebody surprised to see something there.

Q How long had this checkpoint been there at that spot permanently?

A Permanent, more or less since August of last year.

THE COURT: It has been there for years?

A Yes sir, it has been there for years.

THE COURT: What is your definition of permanent?

A Permanent, a checkpoint that don't move from the same fixed location unless, like I said, weather permits that we shouldn't be there.

THE COURT: Because I have been going north of here for a long time and I have been going through checkpoints longer than last year, last August, I guarantee you, so that has been there a long time, hasn't it?

[38] A Oh, yes sir.

THE COURT: Yes.

Q How far was this car when you first saw it? Do you have any idea?

A Well, coming right around the curve, the "slow" sign is about half a mile, approximately half a mile from the checkpoint, so that is about how far he was.

Q And you say he was going at a fast clip? You estimated his speed by looking at him at night?

A Judged speed by approaching of the lights. The sound of the motor and the approaching of the lights.

Q Well, aren't most cars going a fast rate of speed back a half a mile away from the checkpoint?

A Half a mile away from the checkpoint going which way?

Q Yes. I say aren't they most of the time going at a fast rate of speed?

A When they traveling south, they slow down when they come to the first "stop" sign. Going to the first checkpoint they normally go by real slow. Coming from the other direction, some approach the checkpoint pretty fast, some approach the checkpoint slower than others.

Q So it is not unusual for a car to come at this [39] spot that you say he was going pretty fast, it is not unusual for a car to be going pretty fast, is that right?

A No sir.

Q Now, when you have these cars slow down you go up and look in them, don't you?

A Yes, I do.

Q On a routine basis?
A Right.
Q And this is something that you just didn't happen to do with Mr. Sifuentes? This is something that you do? If I went through there or Mr. Sandoval goes through there or anybody, you don't just stand off from the car 10 feet away and say, "go on by"?
A If I know the person, like I said, local residents or people that go through that checkpoint more than once, every other day, I just motion them to go ahead from where I stand.
Q All right. Except for people that you can recognize, and there is bound to be a lot of local traffic through there, you get to see people coming through again, they go to the store and they come back from the store and all that?
A Local people, yes.
Q But aside from that, if it is somebody that you do not know, then you go up to the car, don't you?
[40] A Yes sir.
Q And therefore you would be able to see in the car?
A When I approach it?
Q Yes, and that is why you go up there, isn't it?
A Yes.
MR. BENNETT: I will pass the witness.

—0—

REDIRECT EXAMINATION

BY MR. SANDOVAL:

Q Do you know Champion?
A Yes, I do.
Q Does he look like you?
A No sir.
Q Now, you wear a name tag, don't you?
A Yes sir.
Q Was it light enough that night to see your name tag?
A It should be, yes sir. Name tages are big enough.

Q Okay. Have you asked Champion if you knew this man?
A Yes sir, I had a conversation with Champion the following day and told him—
[41] MR BENNETT: Your Honor, that is clearly hearsay.
THE COURT: Don't say what—if Champion wants to come he can come testify.
Q Now, just to make this point clear, sir, do you know whether anybody else found any letter on any aliens?
A I don't recall, no sir.
Q Now, in years past there have been checkpoints operated south of this checkpoint that you were working that night, is that correct?
A Yes sir.
Q Do you know was there one specifically at a place called Turcotte?
A Yes sir, that's Checkpoint Number Three.
MR. SANDOVAL: Pass the witness.
MR. BENNETT: I have no further questions, Your Honor.
THE COURT: Now what you are talking about Checkpoint Number Three and all that is used to be sometimes checkpoint was at this point, then maybe two or three miles further south and then couple further south and you would move them around so that people wouldn't know exactly where you all were going to be?
A Yes sir, that's what I meant.
[42] THE COURT: And now you are staying at the same point all the time?
A Since August of last year, what we call a permanent checkpoint.
THE COURT: You stay at the same point, don't move up north or south?
A No sir, don't move around.
THE COURT: That is what you mean by permanent?
A Right.
THE COURT: But that doesn't mean that the same kind of a stop wasn't there before August?
A Right.

THE COURT: It was there?
A It has been there all the time.
THE COURT: But it could have been at one of three different places?
A Right.
THE COURT: All right, step down.

(Witness excused)

• • • •

[128] THE COURT: All right, since this question of these people, how long have you been detained, and all, the records of this Court show that on April 29th a complaint was filed against each one of these four aliens involved in this case by Border Patrol Agent Colvin C. Moore sitting next to Mr. Sandoval there. They were brought to the United States Magistrate William Mallett on the 29th, and on that date they all pled guilty to being in this country illegally, and he sentenced them to 90 days suspended for five years on condition of no unlawful return to this country. On the same day Mr. Moore appeared before the Magistrate and filed an affidavit saying that there was a case pending against Rodolfo Sifuentes for transporting the same aliens, and he requested that they be held under an affidavit, requested that the Magistrate hold them here as material witnesses, and the Magistrate did sign an order holding these people as material witnesses here. That is what [129] the records show. All this happened on April 29th, and they have been held in jail ever since awaiting the trial of this man.

(Witness excused)

• • • •

[148] THE COURT: All right, the Government has rested. Any motions by the defendant?
MR. BENNETT: Yes, Your Honor. Just a minute. Let me get my notes.
The defendant would like to move for a judgment [147] of acquittal on the grounds that the evidence is insufficient to sustain a verdict of guilty on any and all the counts.

THE COURT: Completely meritless. Your motion is overruled. Completely meritless.
MR. BENNETT: I would like to move for the production of any evidence or other information that is favorable to the accused.
THE COURT: Yes, if you have anything that is favorable to the defendant.
MR. SANDOVAL: No, Your Honor.
MR. BENNETT: Nothing at all?
That is all of the motions.
THE COURT: Any other motion? All right.
MR. BENNETT: Except this—of course, we have this motion to suppress evidence.
THE COURT: Which is overruled. I have heard the evidence now. Overruled completely. I am not carrying it along with the case any more. Overruled, and I will write on it. I will write on it. If the man gets convicted, I will write on that motion.
MR. BENNETT: All right.
THE COURT: If the Supreme Court in the United States in Almeida-Sanchez intended to do away with all the checkpoints—I'm sure that is not what they intended [148] in the first place—but I am writing on it. I am writing an opinion right now that I will cite in this case if necessary.

• • • •

[249] BY MR. BENNETT:

Q Did the aliens see you again after you were arrested there at the checkpoint? These four passengers.
A Well, yes sir, because the officer had me drive him and these people in my car to Kingsville Jail, so I drove my car and I drove them and the officer with me.
Q All right. Then how long did you stay in the Kingsville Jail?
A I stayed until Monday afternoon.

• • • •

[258] MR. BENNETT: Defense rests, Your Honor.
THE COURT: Any rebuttal?
MR. SANDOVAL: Government closes.
THE COURT: You close?

MR. SANDOVAL: Yes, Your Honor.
THE COURT: You close?
MR. BENNETT: Yes, Your Honor.
THE COURT: All right, members of the jury, will you go out in the hall with the marshal, please?

(Jury absent)

THE COURT: I will hear from you now.
MR. BENNETT: Your Honor, at this time I again would like to renew our motion to suppress this evidence that Your Honor—
THE COURT: That one has already been overruled.
[259] MR. BENNETT: I just thought I would ask you to reconsider it.
THE COURT: I am overruling it again.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Criminal No. 74-B-102

UNITED STATES OF AMERICA

v.

RODOLFO SIFUENTES

Honorable Anthony J. P. Farris, United States Attorney, of Houston, Texas, and Charles F. Sandoval, Assistant United States Attorney, Brownsville, Texas; for the Government.

Ballard Bennett of Weslaco, Texas; for the Defendant.

(Filed August 2, 1974)

MEMORANDUM

The Defendant Rodolfo Sifuentes stands charged by grand jury indictment of four counts or transporting certain aliens within the United States in violation of 8 U.S.C. 1324(a)(2). To these charges the Defendant has entered a plea of not guilty and has filed a Motion to Suppress.

By prior agreement of counsel the Motion to Suppress was carried along with the jury trial of the case. On June 10, 1974, the jury trial began and by that afternoon the government rested. At that time this Court overruled the Defendant's Motion to Suppress. The government's evidence relevant to the Defendant's motion was given from the stand by Agent Gustavo DeLeon of the Border Patrol. Agent DeLeon's testimony was that on April 28, 1974, he and Agent Edward Gerusa were manning the Border Patrol checkpoint near Sarita, Texas. The Sarita checkpoint is a strategically located checkpoint about 65 miles north of the Mexican border on U.S. Highway 77.

All vehicles traveling north out of the Valley on that road were being stopped at that checkpoint for a routine

immigration check. Around 3:00 a.m. the checkpoint was approached by a car driven by the Defendant. As Agent Gerusa was questioning the driver about his citizenship Agent DeLeon noticed that four other persons were also in the car and were slumped down in their seats as if they were asleep. On waking up these four passengers the agents found out that the four passengers were illegal aliens from Mexico. The Defendant was at that time arrested and taken into custody.

By way of his motion the Defendant contends that this stopping of his automobile by the Border Patrol was an unlawful invasion of his right to privacy and constituted an unlawful search without warrant or probable cause contrary to the rights guaranteed by the Fourth Amendment. At the basis of these allegations is the bottom line contention that the recent case of *Almeida-Sanchez* v. *United States*, 413 U.S. 266 (1973), prohibits the Border Patrol from operating checkpoints out on the highway away from the border. This Court has considered this same question on many prior occasions and has recently written extensively on it in *United States* v. *Fuentes*, — F.Supp.——, Cr. No. 74 B 69, decided on June 13, 1974 (S.D.Tex.1974) a copy of which is attached and herein incorporated for all purposes. For the reasons set out in *United States* v. *Fuentes*, *supra*, the Motion to Suppress is denied.

The Clerk will send copies of this Memorandum to the Defendant and his counsel and to the United States Attorney.

Done at Brownsville, Texas this 2nd day of August 1974.

REYNALDO G. GARZA
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA

v.

RODOLFO TRINIDAD FUENTES

Criminal No. 74-B-69

Honorable Anthony J. P. Farris, United States Attorney, of Houston, Texas, and Charles F. Sandoval, Assistant United States Attorney, of Brownsville, Texas; for the Government.

Knox Jones of McAllen, Texas; for the Defendant.

(Filed June 13, 1974)

MEMORANDUM AND ORDER

The Defendant Rodolfo Trinidad Fuentes is charged by Grand Jury indictment of possessing approximately 660 pounds of marihuana, with intent to distribute, in violation of 21 U.S.C. 841(a)(1). To this charge, he has entered a plea of not guilty and has filed a Motion to Suppress.

On May 10, 1974, a hearing was held on Defendant Fuentes' motion. The government called two witnesses, Max W. Ramee, the Assistant Chief of the U. S. Border Patrol Station at McAllen, Texas, and R. D. Kieffe, the U. S. Border Patrolman who made the checkpoint search and arrest. The Defendant did not call any witnesses and rested following the close of the government's evidence.

Apparently there is a feeling by the Border Patrol that their operations of checkpoint searches will soon be significantly effected by the expansion of the landmark holding of *Almeida-Sanchez* v. *United States*, 413 U.S. 266 (1973), by the Fifth and Ninth Circuits. This feeling is well founded in light of the recent Fifth Circuit case of *United States* v. *Speed and Rainer*, —— F.2d —— (5th

Cir., December 28, 1973, No. 73-2035), and *United States* v. *Bowen*, —— F.2d —— (9th Cir., May 9, 1974, No. 72-1012); *United States* v. *Peltier*, —— F.2d —— (9th Cir., May 9, 1974, No. 73-2509). In anticipation of this oncoming assault, the government elicited extensive testimony from Assistant Chief Ramee, who did not participate in the arrest, on the nature and scope of the La Gloria checkpoint in question. He testified that the Border Patrol operates a border patrol checkpoint on FM 1017, nine miles northwest of La Gloria, Texas. This checkpoint is approximately 32 miles from the United States-Mexican border and is in an area and along a route commonly used for the smuggling of aliens and contraband into the interior of the country. Toward the south, FM 1017 connects with at least three other roads that run directly to the Rio Grande River: FM 755, FM 681 and U.S. 281. A quick reference to a map shows that the other two principal checkpoints in this area, Falfurrias and Sarita, are similarly located in strategic positions, and the reasoning advanced in this Memorandum underpinning the legality of the La Gloria checkpoint can also be applied to the Falfurrias and Sarita checkpoints.

Assistant Chief Ramee testified that the checkpoint is normally manned for one eight-hour shift a day, but that it cannot be manned around the clock because of manpower shortages and weather conditions. He also stated that it is the policy of the Border Patrol Agency to stop everyone travelling out of the Valley who passes by this checkpoint to make an immigration check.

Under a rather extensive cross examination, Assistant Chief Ramee stated that he did not know if anglos passing through this checkpoint to the north were simply "waved on" after a cursory glance by the operating agent and re-emphasized that the policy was to stop everyone. It was also brought out on cross examination that the checkpoint is not always in the same location. It is moved up and down the same stretch of highway and, hence may be found on different locations on different days, but always in the same area.

Border Patrolman R. D. Kieffe testified that on February 13, 1974, at 8:15 in the evening, he was manning the checkpoint when he was approached by a 1970 Chrysler driven by the Defendant Fuentes, who was accompanied by his son, Ramiro Fuentes. As the car rolled to a stop, he noticed that it was riding low in the back; while talking to the occupants of the car and visually inspecting the interior, he detected the scent of marihuana about the car, an odor that he had smelled on many prior occasions. Agent Kieffe then requested the driver to open the trunk of the car, but the driver stated that he did not have the key. Agent Kieffe noticed that the key to the trunk was with the ignition key. On checking in the trunk, Agent Kieffe found, in plain view, 660 pounds of marihuana in brick form.

The Defendant has urged upon this Court the position that this warrantless search does not qualify as a border search under the holding of *Almeida-Sanchez*, *supra*, and, therefore, must be judged under the standards of probable cause. He further contends that there was no probable cause for this search and that the search and seizure is, therefore, in violation of his Fourth Amendment rights. In addition to the case of *Almeida-Sanchez* v. *United States*, *supra*, he has cited to the Court the recent Fifth Circuit cases of *United States* v. *Richard Glynn Byrd*, 483 F.2d 1196 (C.A. 5, 1973); *United States* v. *Speed and Rainer*, *supra;* and *United States* v. *Lonabaugh*, — F.2d — (5th Cir., December 17, 1973, No. 73-2241). Finally, he has cited to the Court the recent Ninth Circuit *en banc* decision of *United States* v. *Bowen*, *supra*.

From the onset, this Court wishes to make clear that it is proceeding on the theory that the initial stop was made for the purpose of visually inspecting the passenger section of the car and ascertaining the citizenship of the occupants, pursuant to 8 U.S.C. 1357. Thus, this Court must pass on the legality under the Fourth Amendment of not one, but two searches: the initial inspection and the subsequent search of the trunk. It is the opinion of this Court that the first search, the inspection, was legal, as the checkpoint was, in fact, the functional equivalent of the border, and it was reasonable to stop cars passing

the checkpoint to inspect the citizenship of all passersby and search for aliens. Consequently, the second search—the opening of the trunk—was also legal, as it was based on probable cause derived from the first search and was attended by exigent circumstances.

As was pointed out in the *Almeida-Sanchez* decision, border searches may be carried out many miles from the border if they are conducted at a point that would qualify as a functional equivalent of a border. The Court, by way of illustration, specifically mentioned "searches at an established station near the border at a point marking the confluence of two or more roads that extend from the border might be functional equivalents of border searches". *Almeida-Sanchez* v. *United States*, *supra*, at 272, 273. In the wake of *Almeida-Sanchez*, a significant question has been raised over what is and what is not an "established", "fixed" or "permanent" checkpoint. It is the feeling of this Court that the use of words "established" and "fixed", with reference to checkpoints, was nothing more than a reaction to the capricious and whimsical search that was before that Court. These words do not refer, as it may seem, to the character of the highway location where the search is carried out, but rather to the manner in which it is carried out. This Court simply cannot believe that the Supreme Court of the United States meant to say that the Fourth Amendment rights here involved rise and fall with the presence or absence of "permanent" electrical outlets, large steel signs and concrete buildings. What the Supreme Court found offensive was the arbitrariness of the search that was directed against the Defendant Almeida-Sanchez. This arbitrariness is overcome by a search that is directed at everyone passing a particular point. It is the understanding of this Court that phrases in *Almeida-Sanchez*, such as "established" and "fixed", are references to checkpoints which are carried out in the same general area of a highway and which are directed at everyone passing that point toward the interior of the country. It is the spirit of this understanding that brings the La Gloria checkpoint within the notion of the type of functional border equivalent suggested by *Almeida-Sanchez*: an "established station near the border at a point marking the confluence of two or more roads that extend from the border". Since the La Gloria checkpoint was the functional equivalent of the border, Agent Kieffe had the right to make the initial stop and inspection, just as if he were at the border itself.

There is an additional reason why this checkpoint should be considered a functional equivalent. By virtue of handling the Brownsville Division of the Southern District of Texas for over thirteen years and having lived in the Rio Grande Valley all my life, I have become intimately acquainted with immigration methods and problems peculiar to border areas. This Court wishes to explain more fully some of these problems and methods, for this Court is convinced that a more complete comprehension of them is necessary to understand why the La Gloria checkpoint and those similarly situated are border equivalents and why searches carried out at such operations are reasonable.

There are three types of aliens passing through the Rio Grande Valley. The first class consists of legal entrants who have permission to travel throughout the country for extended periods of time. The second class is formed by legal entrants whose length of stay and geographic range are quite restricted. This class is principally made up of Mexican citizens who carry I-186 border crossing cards, which allow the bearer to visit any place lying within an imaginary zone which extends twenty-five miles from the border, for up to seventy-two hours. The third class consists of the legendary *mojados*, who literally swim the river, often under the cover of night.

At the request of this Court, the Immigration and Naturalization Service has provided this Court with two affidavits concerning the use and misuse of the I-186 cards, copies of which are attached and are herein incorporated for all purposes. They will be referred to by reference to the office from which they were issued, McAllen and San Antonio. As reflected in the McAllen affidavit, it is a common practice for aliens to use the I-186 cards to legally cross the river at one of the seven international bridges located in the Brownsville Division, and thereafter

try to immigrate beyond the twenty-five mile zone into the interior of the country. At the La Gloria checkpoint (referred to as "Rio Grande City" in the affidavit), there were 116 apprehensions of aliens carrying I-186 cards, who were trying to infiltrate to the interior of the country in fiscal 1973, and almost 600 apprehensions at all three Valley checkpoints. Significant as they are, these figures only scratch the surface of the problem. This Court wishes to take judicial notice of the fact that it is also common practice for Mexican aliens to mail the card back to Mexico, before attempting to proceed to the interior, to avoid the confiscation of the card in the event that the alien is caught. Hence, many of the 2,472 aliens apprehended at the traffic checkpoints in the Valley who did not have the I-186 cards on them, no doubt used the cards to gain initial entry into the twenty-five mile zone. Many of the I-186 aliens come to the United States to avail themselves of the merchant stores in the Valley, and these people form an important segment of the retail economy. But there are a significant number, at least 600 and perhaps as high as 3,063 a year, who use these cards to cross the broder with the idea of heading north to enter the American labor market and, thereafter, are caught at the traffic checkpoints. To those that would vanish into the latin communities in the north, the La Gloria checkpoint is really a "second river", where they must present additional documents to gain unrestricted entrance to the interior of the country.

One might argue that the potential problem is not as large as this Court suggests, as the McAllen affidavit figures show less than 600 checkpoint apprehensions of I-186 aliens. Such reasoning simply misses the point. As indicated above, 600 is a low figure because of the mail-back technique. Furthermore, it is the existence of the checkpoints that keeps the flow at a manageable level. The intense pressure to immigrate is reflected by the Ninth Circuit in *United States* v. *Bowen*, *supra*, where the *en banc* panel estimated that there are presently somewhere between 650,000 and 850,000 illegal Mexican aliens in the country. *United States* v. *Bowen*, *supra*, at 21. But behind these people who have illegally, but successfully, penetrated our interior, stand millions whose movements must be regulated if we are to keep any sort of rein on the problem. As reflected by the San Antonio affidavit, there were 19,023,908 non-immigrant crossings at the seven international bridges located in the Brownsville Division. A non-immigrant alien is one who is a citizen of another country who crosses the bridge for purposes other than immigrating to the United States. Of this figure, ninety-one (91%) per cent, or approximately 17,300,000 aliens, gained entrance to the twenty-five mile zone by use of the alien crossing card and could not legally travel out of the zone.

Along the same line of reasoning, it is easy to see that, with regard to those who swim the river and then try to make their way north on public conveyance or by resorting to smugglers, the checkpoint is the first time that they come under the scrutiny of the Immigration and Naturalization Service, and in a real sense the checkpoint, because of its strategic location, serves the same function as the several international bridges that span the Rio Grande.

Considering all of the above, it is clear to this Court that the La Gloria checkpoint is a functional equivalent from two points of view. Under the *Almeida-Sanchez* rationale, as understood by this Court, it is a permanent checkpoint, in that it is strategically located, non-roving and is directed at everyone who passes through it. In addition, under the "second river" theory, the checkpoint is a necessary barrier to which all passing through must present themselves and must prove, on request, their right to travel beyond the twenty-five mile zone into the interior.

This Court is cognizant of the fact that reasonableness is the guiding principle of warrantless searches carried out under the Fourth Amendment, and that in determining reasonableness, the needs of society must be balanced with the rights of individuals vital to our concept of liberty. When a United States citizen presents himself to one of the international bridges and is allowed to enter the country, he has the right to travel anywhere he chooses. However, it does not appear to be widely held

knowledge among either the citizenry or the judiciary that the American crossing the river steps into a zone to which are also admitted tens of thousands of aliens daily who, unlike their American counterparts, do not have the same right to travel anywhere in our nation and must remain inside the twenty-five mile zone. The only way to ferret out those that have the right to travel out of the zone from those that must remain within the zone is to check everyone soon after they have left the zone. Viewed in this posture, the checkpoints bear a rational relationship to a legitimate governmental interest. Of course Congress could do away with the I-186 border passes, but to do so would surely create a sore in American-Mexican relations, as well as wreak havoc on our local economy, and the country would still be faced with the problems of those who swim the Rio Grande to gain entry into the United States. Balancing the very minor intrusion into our Fourth Amendment freedoms with the all but impossible task that would be placed on the Immigration and Naturalization Service by checkpointless regulation of the flow of aliens, I find that these checkpoints are not an affront to the reasonableness requirement of the Fourth Amendment; to the contrary, they are the very voice of reason. If the Immigration and Naturalization Service is to be deprived of this tool of law enforcement, then we had better be prepared to spend tens of millions of dollars annually to assure that those who are prone to violate our immigration laws are caught at the river's edge when they land. This Court cannot believe that this was the intended holding of *Almeida-Sanchez* v. *United States.*

Counsel has cited to the Court the case of *United States* v. *Speed and Rainer, supra,* wherein the Fifth Circuit reversed a conviction based on evidence obtained from the Falfurias checkpoint. The District Court in that case characterized the checkpoint as "non-permanent", and the Fifth Circuit panel seized upon the characterization to reverse the District Court with the following language:

> "*Almeida-Sanchez*, if it has not answered all the questions about this area of the law, has at least given new focus to the inquiries. We must now ask if a search occurred either at the border or at the

functional equivalent thereof. 37 L.Ed.2d at 602. If not, then it is not a border search . . ."

"Proximity to the border is not enough. The searching officer must know or have reasonable suspicion that the inidividual or thing searched has just crossed the border." (Quoting from *United States* v. *Lonabaugh, supra.*)

"In *Almeida-Sanchez*, a roving border patrol searched a car on an east-west highway about 25 miles from the border. In this case, we have a temporary checkpoint located on a north-south highway between 65 and 75 miles from the border. Neither search was at the border or its functional equivalent . . ."

"The distinction between a checkpoint and a roving patrol is not important. There appears to be little difference between the interference with domestic traffic caused by patrols and that caused by temporary checkpoints which may be moved about at the whim of the agents who operate them."

"Thus, what occurred in this case is essentially identical to the searches in *Almeida-Sanchez* and *Byrd*. The only connection to the border which could justify any of the searches was that they fell within the ambit of 8 U.S.C. § 1357(a) and C.F.R. § 287.1, and that similar searches in the area had produced evidence of illegal activity. Neither a Congressional statute nor praise for the results of a certain investigative technique can justify an otherwise illegal search and seizure. The convictions of both appellants are

REVERSED."

A reading of the District Court's opinion, *United States* v. *Speed and Rainer*, written by the Honorable Owen D. Cox of the Corpus Christi Division of our Court, Cr. No. 72-C-70, shows that the checkpoint was non-permanent, in that it was not manned at all hours of the day and was shifted up and down the same general stretch of the highway, in order that its effectiveness in detecting illegal aliens not be diminished. Though its exact location might be called "whimsical", in that it was not always the same

number of miles from the border, there is no finding one way or the other by the District Court, or comment by the Fifth Circuit that it was whimsical in the sense that it stopped travellers in an arbitrary fashion and did not stop everyone. It is this type of whim that *Almeida-Sanchez* condemned.

This Court, therefore, finds that the case of *United States* v. *Speed and Rainer, supra*, is not controlling for two reasons: first, the *Speed, Rainer* decision limits its consideration of "whim" to the geographical sense and does not address the question of whim with respect to those searched; and second, the decision deals with a checkpoint which the Court found to be a non-border equivalent, whereas, in the case before this Court, the checkpoint involved is a border equivalent within the meaning of *Almeida-Sanchez*.

It should be further noted that there is considerable doubt in the mind of this Court as to whether *Almeida-Sanchez*, which is the basis of *Speed, Rainer*, can in fact be relied upon in overturning a conviction based on a checkpoint classed as "temporary" in the geographic sense. It may be significant to note that Justice Powell cast the swing vote of the *Almeida-Sanchez* decision; in his concurring opinion, he specifically states that the issue of the constitutionality of "temporary" checkpoint searches was not before the Court. *Almeida-Sanchez, supra*, at 276.

Finally, with respect to the Defendant's contention that *Speed, Rainer* is a definitive holding, this Court would note that the opinion was written by Judge Lewis R. Morgan and was delivered on December 28, 1973. Yet in *United States* v. *Merla*, — F.2d —, (5th Cir., May 6, 1974, No. 73-3660), Judge Morgan participated in a Per Curiam opinion concerning the Sarita checkpoint, which is identical to the Falfurrias checkpoint, wherein the panel implies that the question of border equivalency of that checkpoint is still an open one.

Counsel had also cited to the Court the case of *United States* v. *Lonabaugh, supra*, and *United States* v. *Byrd, supra*, and *United States* v. *Bowen, supra*. In *Lonabaugh*, the critical issues were the border equivalency of an airport and the presence or absence of exigent circumstances

to search a detained suitcase. In *Byrd*, the Court had before it a roving Border Patrol search. Both of these cases are factually distinguishable from the search before this Court.

The *Bowen* case presents a larger problem. In *Bowen*, the Ninth Circuit had originally affirmed Per Curiam the narcotic conviction arising out of checkpoint search in *United States* v. *Bowen*, 462 F.2d 347 (C.A. 9, 1972). The case was appealed to the Supreme Court, who vacated the Ninth Circuit opinion and ordered that case remanded for consideration in light of *Almeida-Sanchez* v. *United States, supra*. *Bowen* v. *United States*, 413 U.S. 915 (1973). On remand, the Ninth Circuit took the case up *en banc* and held 7 to 6 that the search was clearly illegal under the *Almeida-Sanchez* rationale. The effect of *Bowen* is to disqualify all interior highway checkpoints of this nature as functional equivalents of the border and require probable cause for all searches carried out at "fixed" highway checkpoints. While this Court is not bound by the *Bowen* decision, it wishes to consider it in light of the similarity of the factual and legal issues raised to those in the case at bar. Bowen was stopped at a fixed checkpoint forty-nine highway miles from the border, on a road that leads directly to the border itself. The searching officer was looking inside the camper for aliens, when he detected the odor of marihuana and later found 365 pounds of marihuana. The *en banc* majority held that this search was illegal under *Almeida-Sanchez*. The marihuana search seems to have been made on probable cause, but the facts which gave rise to the probable cause were fruits of the poisonous tree, because in "plain view" theory, the sensing officer must be legally located in the position from which he gains his inadvertent perceptions upon which his probable cause is based. Under this rationale, the implicit holding of *Bowen* is that the Border Patrol did not have the right to be in the camper to make the initial search for aliens. He lacked this right because the checkpoint in question failed to have the factual setting to be a border equivalent, as there was no showing that a high per cent of the people who travelled the road had just crossed the

border and the checkpoint was not an interior port of entry in the same sense as the St. Louis airport would be.

From the onset, this Court wishes to direct attention to the dissenting opinion of Judge J. Clifford Wallace, who focuses on the above cited portion of Justice Powell's opinion in *Almeida-Sanchez*, wherein Justice Powell specifically limits *Almeida-Sanchez* to the roving search before that Court. As stated before, this Court is convinced that the holding of *Almeida-Sanchez* is a narrow one and has been joined in this feeling by the Fifth Circuit, *United States* v. *Byrd*, *supra*, and by Chief Judge Ben C. Connally of the Southern District of Texas, who, like the undersigned, is widely versed in subject of alien control in border areas, in his Memorandum and Order of May 13, 1974, in *United States* v. *William Christian Boecker*, Criminal No. 74-L-27, in the Laredo Division of this Court. But aside from this serious reservation, this Court notes, as is pointed out in the majority opinion in *Bowen*, that the touchstone of non-warrant searches under the Fourth Amendment is reasonableness. In *Bowen*, the Court acknowledged the fact that not every car passing the checkpoint was stopped and not every car stopped was searched. Thus, room for discretionary whim still existed. But the *Bowen* court then reasoned further that, this point aside, it found nothing in the *Almeida-Sanchez* decision which would limit its application to only roving patrols:

> "Nonetheless, even conceding that a fixed checkpoint search might be less of an imposition on domestic travelers than a roving patrol search, we are able to find nothing in the opinion of the Court in *Almeida-Sanchez* which suspends Fourth Amendment standards in dealing with immigration searches at fixed checkpoints." (Pages 5-6 of ship opinion.)

As this Court has stated above, it is the whimsical nature of the search in *Almeida-Sanchez* that made it unreasonable. This Court is aware of certain "wave by" techniques that are used at some checkpoints, but it is the evidence before this Court that the checkpoint in question had the policy of questioning all who passed by. A checkpoint

where everyone is stopped removes the arbitrariness of the search and in the mind of this Court renders *Almeida-Sanchez* inapplicable. Consequently, this Court must respectfully disagree with the Ninth Circuit and hold that *Almeida-Sanchez* does not govern the factual setting of the case before it. It is interesting to note that out of the thirteen judges who participated in the *Bowen* decision, only Chief Judge Richard H. Chambers and Judge Wallace live on or near the Mexican border and both of them dissented in the *Bowen* opinion.

Since the checkpoint in the case at bar was the functional equivalent of the border, the initial search was legal. Consequently, the second search was also legal, as it was accompanied by probable cause gained in the first search and exigent circumstances. Agent Kieffe testified that the car was riding low in the back—an impression that is confirmed by the sheer bulk of the discovered contraband, 660 pounds—and that while inspecting the occupants and the vehicle, he smelled the scent of marihuana. This olfactory impression was gained while he was standing in a place where he had a right to be and was inadvertent on his part. As such, it comes under the plain view doctrine which applies to all sensory impressions gained by an officer who is legally present in the position from which he gains them. *United States* v. *Leazar*, 460 F.2d 982 (C.A. 9, 1972); *United States* v. *Perry*, 339 F.Sup. 209 (D.C. Cal. 1972). This smelling of marihuana did not constitute a search, *Walker* v. *Beto*, 437 F.2d 1018 (C.A. 5, 1971), but, when combined with the fact that it emanated from a low-riding automobile, gave Agent Kieffe probable cause to search the entire car. I need only add that the search was attended by exigent circumstances in that a moving automobile was being searched on the open road. *Carroll* v. *United States*, 267 U.S. 132 (1925).

In conclusion, the initial stop and inspection was legal, because it was carried out at the functional equivalent of the border and it was reasonable to stop all who passed that point for an inspection. The second search, which revealed 660 pounds of marihuana, was a legal consequence of the first search and was itself legal, based as it was on probable cause and exigent circumstances. The

only way that the searches in question could be invalidated would be for this Court to hold 8 U.S.C. 1357 unconstitutional—the statute authorizing Border Patrol agents to make the initial stop—a step this Court declines to take.

On May 31, 1974, the Defendant appeared with counsel and in open court announced that he wished to waive a jury and submit his case to the Court on the testimony adduced at the hearing, along with the stipulation that the seizure weighed 660 pounds and contained marihuana. The evidence on the question of innocence or guilt is quite simple. While making a traffic checkpoint inspection, Border Patrolman Kieffe noticed the smell of marihuana about the Defendant's heavily loaded car. On opening the trunk of the car, Officer Kieffe found 660 pounds of marihuana, an amount sufficient for this Court to presume commercial intent. This Court is convinced beyond a reasonable doubt that the Defendant knowingly possessed 660 pounds of a substance that he knew to be marihuana and, therefore, finds him guilty as charged of possessing 660 pounds of marihuana, with intent to distribute, in violation of 21 U.S.C. 841(a)(1).

The Defendant, Rodolfo Trinidad Fuentes, will present himself to the Court on Monday, July 8, 1974, at 9:30 a.m. for sentencing.

The Clerk will send copies of this Memorandum and Order to the Defendant and his counsel and to the United States Attorney.

DONE at Brownsville, Texas, this 13th day of June, 1974.

REYNALDO G. GARZA
United States District Judge

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

U. S. Border Patrol
P. O. Box 1178
McAllen, Texas 78501

May 31, 1974

(Filed June 5, 1974)

MCA 40/11-C

Mr. John P. Smith
Assistant U. S. Attorney

Southern District of Texas
P. O. Box 1671
Brownsville, Texas 78520

Dear Mr. Smith:

In accordance with your request I am enclosing an affidavit which I hope meets your need.

I have also included a voided copy of Form I-186 and copies of Forms G-23-17 for Fiscal Year 1973, showing apprehension statistics for the three Border Patrol Stations. This material has been included for whatever relevancy it may have to the matter.

Sincerely,

LEO E. DUNNIGAN, Acting
Chief Patrol Agent

AFFIDAVIT

LEO E. DUNNIGAN, Acting Chief Patrol Agent of the McAllen, Texas Sector, U. S. Border Patrol, being duly sworn deposes and says:

Non-immigrant Mexican aliens who have been issued Form I-186, Non-Resident Alien Mexican Border Crossing Card, may be admitted to the United States without other documentation. When used as the sole entry document the Form I-186 is valid only for visits to the United States within 25 miles of the Mexican border for a period of seventy-two (72) hours or less.

The following statistics, from official records, reflect the number of alien visitors with Forms I-186 who were apprehended at Border Patrol traffic checkpoints near Falfurrias, Kingsville and Rio Grande City, Texas during Fiscal Year 1973. These aliens were destined to the interior of the United States without the proper additional documentation as required:

Falfurrias	244
Kingsville	231
Rio Grande City	116

LEO E. DUNNIGAN

SUBSCRIBED AND SWORN TO, before me, this 31st day of May, 1974.

DOLORES SANCHEZ
Notary Public in and for Hildalgo County, Texas

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

DEPORTABLE ALIENS LOCATED BY BORDER PATROL

Month: FY-73
Reporting office: RIO GRANDE CITY STATION

IV. BORDER PATROL (Contd.)

Operation	TOTAL (Columns 2-12)	Status at entry: Agricultural worker	Visitor	Student	Crewman D-1: Non-willful violator	Crewman D-1: Willful violator	Crewman D-2: Non-willful violator	Crewman D-2: Willful violator	Immigrant	Stowaway	E. W. I.	Other	Length of time illegally in U. S.: At entry	Within 72 hours	4-30 days	Over 30 days	8 U. S. C. 1324, 1327, 1328: Principals	Aliens: By aircraft	By watercraft	By other means	Fraudulent claim to USC: Presented documents	Unsupported oral claims	Fraudulent claim to legal status: Alien Registration Receipt Card (I-151)	Non-resident Alien Mexican Border Crossing Card (I-186)	Other
	1	2a	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
1. TOTAL (Lines 2-10)	1704		215			1			6		1440	42	825	762	123	30	82			302	39	6	6	6	
2. Line watch	886		27						1		864	4	768	60	23	7	11			32	6	1	1		
3. Patrol																									
4. Farm-ranch check	241		22								217	2	2	123	76	18	1			2	2			2	
5. Traffic check	444		116			1			5		288	34	34	227	5	2	70			247	31	5	5	4	
6. Transportation check - Total																									
(a) Bus																									
(b) Passenger train																									
(c) Freight train																									
(d) Aircraft																									
7. City patrol	92		44								46	2	1	35	7	3									
8. Boat patrol																									
9. Crewman-stowaway																									
10. Turned over to BP by other agencies	31		6								25			17	6	2									
11. *Observation aircraft	453		4								449														
12. *Electric eyes																									
13. *Ultraviolet light	1											1													
14. *Other elec./mech. devices	16										16														

* Included in appropriate activity, lines 2 through 10.

CREWMAN - Exclude crewmen on 29-day permits.

E. W. I. - Place of entry - Station area

TOTAL	CRU	ECJ	CAO	ELC	CAX	YUM	TNA	GRN	CAC	TCA	NGL	DGL	LOS	CLM	EPT	FBN	FHT	SBT	VHT	MAR	PRS	APT	SNN	COM	DRT	EGT	CAB	LRT	HEB	RGC	NCA	MER	HRL	BRP	BLW
1440											1				2										1		24		1136	478	42		36	

LMD	CHS	CDV	BOH	WTW	BRN	SWC	HYM	MET	WOL	PRT	SCT	PMB	ARM	INT	SMM	SAM	PHM	DTM	TRE	BLN	NIB	WAT	OGN	MNB	MLB	ROB	SWB	RIB	DRV	BVB	JMB	VMB	PTM	MLV	LMB	CMB

BEST COPY AVAILABLE

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

DEPORTABLE ALIENS LOCATED BY BORDER PATROL

Month: FY-73
Reporting office: FALFURRIAS STATION

IV. BORDER PATROL (Contd.) Operation	TOTAL (Columns 2-12)	Status at entry: Agricultural worker	Visitor	Student	Crewman D-1: Non-willful violator	Crewman D-1: Willful violator	Crewman D-2: Non-willful violator	Crewman D-2: Willful violator	Stowaway	E. W. I.	Other	Length of time illegally in U. S.: At entry	Within 72 hours	4-30 days	Over 30 days	8 U.S.C. 1324, 1327, 1328: Principals	Aliens: By aircraft	Aliens: By watercraft	Aliens: By other means	Fraudulent claim to USC: Presents documents	Fraudulent claim to USC: Unsupported oral claims	Fraudulent claim to legal status: Alien Registration Receipt Card (I-151)	Fraudulent claim to legal status: Non-resident Alien Mexican Border Crossing Card (I-185)	Fraudulent claim to legal status: Other
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
1. TOTAL (Lines 2-10)	2727		311						51		2124	241		1172	687	765	61			202	256	13	55	12	
2. Line watch																									
3. Patrol	302		3								249			159	139	5	4			31					
4. Farm-ranch check	300		34								297			53	169	65				1					
5. Traffic check	1220		244						40		716	220		539	163	15	55			155	234	12	44	12	
6. Transportation check - Total	437		42						11		470	14		266	82	126					18	1	11		
(a) Bus	282		40						10		218	14		42	61	115					17	1	10		
(b) Passenger train																									
(c) Freight train	255		2						1		252			220	21	11							1		
(d) Aircraft																									
7. City patrol	32		6								23	3		8	12	3	2			15	3				
8. Boat patrol																									
9. Crewman-stowaway																									
10. Turned over to BP by other agencies	336		13								319	4		196	126	51					1				
11. *Observation aircraft	113										113														
12. *Electric eyes																									
13. *Ultraviolet light	18											18													
14. *Other elec./mech. devices	37										37														

* Included in appropriate activity, lines 2 through 10.

CREWMAN - Exclude crewmen on 29-day vessels.

E. W. I. - Place of entry - Station area

TOTAL	CHU	ECJ	CAO	ELC	CAX	YUM	TNA	GBN	CAG	TCA	NGL	DGL	LOB	CLM	EPT	FBN	FHT	SBT	VHT	MAR	PRS	AFT	SNN	COM	DRT	EGT	CAR	LRT	HYD	RGC	MCA	MER	HDL	BRP	BLW
2124														7							2				44	40		488		110	1125	155		153	

LND	ORB	COV	BCN	WHP	BRN	SWC	HVM	MLT	WOL	FRT	BOT	PMB	WRM	INT	CMM	SMV	PHM	DTM	TRE	ION	NIB	WAT	OGN	MNB	MLB	ROB	SWB	RIB	DBV	BVB	JMB	VMB	FTM	HLT	LMB	CMB

BEST COPY AVAILABLE

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

DEPORTABLE ALIENS LOCATED BY BORDER PATROL

Month: FY-73
Reporting office: KINGSVILLE STATION

IV. BORDER PATROL (Contd.) Operation	1 TOTAL (Columns 2-12)	Status at entry: 2 Agricultural worker	3 Visitor	4 Student	5 Crewman D-1 Non-willful violator	6 Crewman D-1 willful violator	7 Crewman D-2 Non-willful violator	8 Crewman D-2 willful violator	9 Immigrant	10 Nonimmigrant	11 E.V.I.	12 Other	Length of time illegally in U.S.: 13 At entry	14 Within 72 hours	15 4-30 days	16 Over 30 days	8 U.S.C. 1324, 1327, 1328: 17 Principals	18 Alien: By aircraft	19 By watercraft	20 By other means	Fraudulent claim to U.C.: 21 Presented documents	22 Unsupported oral claims	Fraudulent claim to legal status: 23 Alien Registration Receipt Card (I-151)	24 Nonresident Alien Mexican Border Crossing Card (I-186)	25 Other
1. TOTAL (Lines 2-10)	3622		287	2		1			62		1759	361		357	616	76	69			274	357	53	67	5	
2. Line watch	2480		14								934			557	323	2	5			39					
3. Patrol	150										150			10	114	24	1			4					
4. Farm-ranch check	1393		231	2					61		749	350		88	113	31	63			231	356	53	66	5	
5. Traffic check	181										181			136	50	1									
6. Transportation check - Total	14										5			5											
(a) Bus																									
(b) Passenger train																									
(c) Freight train	178										14			127	50	1									
(d) Aircraft																									
7. City patrol	18		1						1		10	6		1	6	3					1		1		
8. Boat patrol																									
9. Crewman-stowaway																									
10. Turned over to BP by other agencies	20		1								17			9	7	4									
11. *Observation aircraft	434										434														
12. *Electric eyes																									
13. *Ultraviolet light																									
14. *Other elec./mech. devices	399										399														

* Included in appropriate activity, lines 2 through 10.

CREWMEN - Exclude crewmen on 29-day vessels.

E. w. i. - Place of entry - Station area

TOTAL	CHU	ECU	CAO	ELC	CAX	YUN	TKA	OBN	FAG	TCA	NGL	DGL	LTB	LRM	LRT	LRV	FBN	LMT	LRT	WHT	WAT	HR	ANT	TNN	CON	DRT	FGT	CAR	LRT	HEB	RGC	MCA	MER	MRL	RPC
1949											1																6	1		15		15	477	137	20	957

BLW	LND	ORV	COV	BDN	WHF	BRN	SHL	HRN	WLT	WCL	PRT	BLT	HWD	WRW	HE	CMV	BW	FNW	DTW	TRE

BUN	MIB	WAT	OGN	WNB	MLB	ROB	SWB	RIB	DBV	BVD	LWB	LMR	SFW	HLT	LMB	CMB

*/ Stations not included by service location code.

BEST COPY AVAILABLE

52

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

P. O. Box 2539
U. S. Post Office & Courthouse
San Antonio, Texas 78206

June 7, 1974

(Filed June 11, 1974)

To Whom It May Concern:

According to statistical information of this Service, the following nonimmigrant aliens entered at land border ports of entry from Brownsville through Falcon during F.Y. 1973 (July 1, 1972 through June 30, 1973):

Brownsville	—	9,016,853
Progreso	—	866,024
Hidalgo	—	6,800,139
Los Ebanos	—	55,162
Rio Grande City	—	479,760
Roma	—	1,687,013
Falcon	—	118,957
Total		19,023,908

Of these nonimmigrant aliens, over 91% entered by presentation of nonresident alien border crossing cards and were admitted without further documentation for visits within 25 miles of the international boundary for periods not to exceed 72 hours.

Signature: JOE F. STALEY
Joe F. Staley
District Director

Subscribed and sworn to before me at San Antonio, Texas on June 10, 1974.

LAURA THOMAS
Notary Public

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

No. 74-B-102

[Filed Jul 13, 1974]

UNITED STATES OF AMERICA

v.

RODOLFO SIFUENTES

JUDGMENT AND COMMITMENT

On this 12th day of July, 1974 came the attorney for the government and the defendant appeared in person and [1] with counsel, Ballard Bennett.

IT IS ADJUDGED that the defendant upon his plea of [2] not guilty and a verdict of guilty being returned after a trial before the Court and Jury has been convicted of the offense of transporting certain aliens within the United States, in violation of Section 1324(a)(2), Title 8, United States Code, as charged in the Indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of [3] Two (2) years on each of Counts 1 and 2; said sentence to run concurrently.

IT IS ADJUDGED that the defendant shall serve a period of SIX (6) MONTHS of the foregoing sentence and the remainder of one (1) year and six (6) months is hereby suspended; and the defendant is placed on probation with supervision, to commence after release from confinement, for three (3) years, conditioned on good behavior.

IT IS ADJUDGED that [5] imprisonment of two (2) years is hereby imposed as to each of Counts 3 and 4; said sentence to run concurrently but consecutively to sentence imposed in Counts 1 and 2; IT IS FURTHER ADJUDGED that these two (2) years are hereby suspended, and the defendant is placed on probation with supervision for three (3) years, conditioned on good behavior, and further conditioned that he submit to treatment for his drinking problem.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

APPROVED AS TO FORM:

/s/ Charles F. Sandoval
CHARLES F. SANDOVAL, AUSA

/s/ Reynaldo G. Garza
United States District Judge
V. BAILEY THOMAS
Clerk

The Court recommends commitment to [6] Done at Brownsville, Texas, this 13th day of July, 1974.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Criminal No. 74-B-102

[Filed Jul 16, 1974]

UNITED STATES OF AMERICA

vs.

RODOLFO SIFUENTES

DEFENDANT'S NOTICE OF APPEAL

Sentence having been imposed in the above styled and numbered cause on July 12, 1974, notice is hereby given that Rodolfo Sifuentes, Defendant in the above styled and numbered cause, hereby appeals to the United States Court of Appeals for the Fifth Circuit, New Orleans, Louisiana, from the final judgment in this cause.

/s/ Ballard Bennett
BALLARD BENNETT
Court-Appointed Attorney
for Defendant, Rodolfo
Sifuentes
P. O. Box 102
Weslaco, Texas 78596
512-968-8111

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

OFFICE OF THE CLERK

July 31, 1975

TO COUNSEL OR PARTIES LISTED BELOW:

No. S74-2961—USA v. RODOLFO SIFUENTES

Gentlemen:

You are hereby notified that a panel of this Court, after due consideration and pursuant to Local Rule 18, has transferred the referenced case to the Summary Calendar for disposition.

Local Rule 18 states: "(a) Whenever the Court, sua sponte or on suggestion of a party, concludes that a case is of such character as not to justify oral argument, the case may be placed on the summary calendar. (b) A separate summary calendar will be maintained for those cases to be considered without oral argument. Cases will be placed on the summary calendar by the Clerk, pursuant to directions from the Court. (c) Notice in writing shall be given to the parties or their counsel of the transfer of the case to the summary calendar."

Yours sincerely,

EDWARD W. WADSWORTH, Clerk
BY: /s/ Joan Perkins

Mr. Ballard Bennett
Mr. John Patrick Smith

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 74-2961

Summary Calendar*

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE,

vs.

RODOLFO SIFUENTES, DEFENDANT-APPELLANT.

Appeal from the United States District Court
for the Southern District of Texas

(August 8, 1975)

Before GEWIN, GOLDBERG and DYER, Circuit Judges.

PER CURIAM:

The judgment of conviction appealed from is affirmed. United States v. Santibanez, 5 Cir. 1975, — F.2d —. See Local Rule 21.[1]

---

* Rule 18; 5 Cir., Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir., 1970, 431 F.2d 409, Part I.

[1] See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir. 1970, 430 F.2d 966

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-5387

RODOLFO SIFUENTES, PETITIONER,

v.

UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO the United States Court of Appeals for the Fifth Circuit.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is set for oral argument in tandem with No. 74-1560, United States v. Amado Martinez-Fuerte.

November 11, 1975

Mr. Justice Douglas took no part in the consideration or decision of this motion and petition.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 389840 177